

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TOMMY THOMASON,

Plaintiff,

vs.

Case No. 07-CV-13767  
HON. GEORGE CARAM STEEH

PATRICIA L. CARUSO, et al.,

Defendants.

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ORDER DENYING PLAINTIFF'S MOTION TO DISMISS FILING FEE AND  
RETURN OF ORIGINAL COMPLAINT (# 10) AND  
DENYING AS MOOT PLAINTIFF'S MOTION FOR  
IMMEDIATE EMERGENCY PRELIMINARY INJUNCTION (# 11)

Plaintiff Tommy Thomason, a Michigan prisoner appearing pro se, filed a complaint on September 7, 2007 alleging fifteen separate defendants, including staff of the Michigan Department of Corrections and healthcare provider CMS, Inc., are liable under 42 U.S.C. § 1983 for deliberate indifference to his serious medical conditions of Hepatitis C, cirrhosis, muscle loss, high enzyme levels, limb swelling, and severe abdominal problems. Thomason sought injunctive relief and damages in excess of \$540 million. Thomason also filed an application to proceed in forma pauperis (IFP), a motion for a preliminary injunction, and a motion to "expedite urgent medical emergency." Eighteen days later, on September 25, 2007, Thomason filed a one-page "Request to Withdraw," asking that his claims be withdrawn without prejudice because "an error of procedure may exist within this filing, and [Thomason] wishes to correct the error before being procedurally defaulted." On October 19, 2007, the Magistrate Judge granted Thomason's request to proceed IFP on

condition that Thomason pay an initial \$6.00 partial filing fee, and subsequent monthly payments equal to 20 percent of the preceding month's income credited to Thomason's prisoner account. On October 22, 2007, this court granted Thomason's motion to withdraw his claims, ordered the Complaint to be dismissed without prejudice subject to Thomason's right to re-file a timely Complaint, and entered judgment dismissing Thomason's claims without prejudice.

On November 6, 2007, 15 days after his claims were dismissed without prejudice, Thomason filed the instant "Motion To Dismiss Filing Fee and Return Original Complaint." Thomason asks that the court "dismiss" the filing fee requirement as ordered on October 19, 2007 because he cannot afford the \$350.00 filing fee. Thomason argues that he will be "filing" his new Complaint before December 25, 2007. On November 29, 2007, Thomason filed a motion for a preliminary injunction in this lawsuit.

Thomason's November 6, 2007 request to dismiss the filing fee requirement as ordered on October 19, 2007 constitutes an untimely motion for reconsideration. See E.D. Mich LR 7.1(g)(1) (requiring motion for reconsideration to be filed within 10 days after entry of an order). Even if the motion were timely, Thomason's assertion that he cannot afford the \$350.00 filing fee does not support a finding of palpable error that requires a different disposition of the Order. See E.D. Mich LR 7.1(g)(3). Thomason was ordered to pay \$6.00 towards the filing fee, not the entire \$350.00. Thomason's motion to dismiss the filing fee is without merit. The court has attached a copy of the complaint Thomason filed in this action, although the original remains on file with the court.

Thomason's November 29, 2007 motion for a preliminary injunction is moot. Thomason's complaint was dismissed on October 22, 2007. Thomason must "re-file" his

claims as a new lawsuit, including a renewed application to proceed IFP. This case, Case No. 07-13767 was closed with the entry of judgment on October 22, 2007.

For the reasons set forth above, Thomason's motion to dismiss filing fee and return of original complaint is hereby DENIED. The court has attached a copy of the complaint filed in this action to Thomason's copy of this Order. Thomason's motion for immediate emergency preliminary injunction is hereby DENIED as MOOT.

SO ORDERED.

Dated: August 14, 2008

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 14, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Deputy Clerk